

HIGHLY CONFIDENTIAL - PATRICK CLACKSON  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555 (JMP)  
HOLDINGS, INC. et al., (Jointly Administered)

Debtors.

HIGHLY CONFIDENTIAL  
DEPOSITION OF PATRICK CLACKSON

Friday, September 4, 2009

At: 9:00 am

Taken at:

Barclays

1 Churchill Place

London

United Kingdom

Reported by: AILSA WILLIAMS  
Certified LiveNote Reporter

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16 Also Present:

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18  
19  
20  
21  
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24  
25

1 HIGHLY CONFIDENTIAL - PATRICK CLACKSON

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 Q. I have handed you a one page document  
22 marked Exhibit 362A. Take a moment to review it.  
23 Please let me know when you are done.

24 A. I have reviewed it.

25 Q. The bottom e-mail is an e-mail from

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2 James Trevelyan.

3 A. Yes, he is a member of the Barclays  
4 corporate development group.

5 Q. To you, and he is again discussing  
6 negative goodwill, and in particular the comp and  
7 cure provisions. Do you see that?

8 A. Yes.

9 Q. He states in his second paragraph of his  
10 e-mail:

11 "We understand broadly that the negative goodwill  
12 arises because the 2.25 cure payment and 2.0 comp provision  
13 won't be valued at that amount but instead circa 1.3 or  
14 C1.3."

15 Do you see that?

16 A. Yes.

17 Q. Do you understand that as circa 1.3?

18 A. Yes.

19 Q. Approximately 1.35. "The difference  
20 (2.95) giving rise to net assets for which we pay  
21 250 million." Is that how you understand that?

22 A. Yes, I think that is right.

23 Q. "Leading to a negative goodwill of  
24 \$2.7 billion." Is that right?

25 A. Yes.

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2           Q.    Was his description of the source of the  
3   negative goodwill accurate in your view?

4           A.    In many ways you can calculate things in  
5   different ways, but in terms of the estimates we  
6   had at that time, and looking at the balance sheet  
7   which we thought under the agreement we were  
8   taking on, the assets and the liabilities we were  
9   taking on, that was the estimate. I suppose there  
10   was a lot of confusion, as I said, a lot of  
11   different versions, things changing by the minute  
12   over time, and going on for quite a long period of  
13   time. So I suppose what I tried to share was what  
14   was my provisional understanding at the time,  
15   which was in terms of -- which I think I have set  
16   out here, in terms of the compensation we were  
17   taking, and we had to take a lot of liabilities to  
18   people, it looks like my understanding at the time  
19   was -- I mean all these things developed and  
20   changed but I was saying here I thought in terms  
21   of what we accounted for was the cash portion  
22   rather than the deferred portion of the bonuses.  
23   So that would be the compensation in the opening  
24   balance sheet, which as I said I think I mentioned  
25   earlier I was erroneous in my estimate on that,

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2 and on the cure payments we had potential  
3 liabilities, and I hoped at the time that we would  
4 be able to find ways of negotiating with our  
5 suppliers, so we were taking on suppliers and we  
6 would find ways of negotiating with our suppliers.  
7 So that because of the existing relationship of  
8 Barclays and the combined relationship of the  
9 combined Barclays and Lehman group, that the cure  
10 payments could be kept to a low level. So that  
11 was my hope at that point.

12 Q. And to date what has Barclays paid out  
13 in the cure payments related to this transaction?

14 A. I can't precisely remember. I think  
15 again it is -- I am sure we disclose it in our  
16 financials.

17 Q. Does a number around \$300 million ring  
18 a bell?

19 A. Not really, but it could be.

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]